

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF THE APPLICATION of AYOMIKUN BUS CHARTERS LTD. for
the issue of a Motor Carrier License

BEFORE: Roland A. Deveau, K.C., Vice Chair

APPLICANT: **AYOMIKUN BUS CHARTERS LTD.**
Kevin Brooks, President
Peter Field, Vice President

OBJECTORS: **PRESTIGE LIMOUSINE**
Thariq Ali, Owner/Operator (Did not appear)

ANCHOR TOURS
John Jeffrey Babineau, Owner/Operator

HEARING DATE: May 6, 2024

**UNDERTAKINGS
FILED:** May 7, 2024

DECISION DATE: June 20, 2024

DECISION: The Application is approved but directs a revised rate
schedule to be filed.

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1.0 SUMMARY

[1] Ayomikun Bus Charters Ltd. (Ayomikun) applied to the Board for a motor carrier license to operate one 12-passenger vehicle and one 26-passenger wheelchair accessible vehicle to transport passengers from “anywhere in Nova Scotia to various Black heritage sites throughout Nova Scotia, including the Halifax Regional Municipality, Preston Township and Birchtown”, Shelburne County, Nova Scotia.

[2] The application was opposed by Anchor Tours and Prestige Limousine. They submitted that there was insufficient demand in the market for the services and vehicles requested by Ayomikun, asserting there was overcapacity in the industry. They also said that Ayomikun had not done a sufficient market analysis or business plan before applying for the license.

[3] In deciding whether Ayomikun should be granted a motor carrier license, the Board must consider whether the applicant has established a need for the proposed service and whether it can provide a quality service in a safe, reliable, and sustainable manner. The public passenger charter industry in Nova Scotia is economically regulated under the *Motor Carrier Act*. This is to ensure the economic sustainability of carriers in the industry, given the significant operating expenses and the high capital investment needed for equipment.

[4] The Board considered all the evidence in the context of the test it applies to new license applications under the *Motor Carrier Act*. The Board was satisfied that Ayomikun’s evidence established, on a balance of probabilities, that there is enough demand for the requested service for this niche market and the proposed vehicles. The new service will not impact other carriers. The Board, therefore, approves the application and directs that Ayomikun file a revised rate schedule.

2.0 BACKGROUND

[5] Ayomikun, of Mineville, Nova Scotia, applied to the Board for a motor carrier license on January 23, 2024, under the *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (*MCA*). The application included a request to operate one 12-passenger vehicle and one 26-passenger wheelchair accessible vehicle to transport passengers from anywhere in Nova Scotia to various Black heritage sites throughout Nova Scotia, including the Halifax Regional Municipality (HRM), Preston Township and Birchtown, Shelburne County, Nova Scotia.

[6] Ayomikun applied for a motor carrier license with the following terms:

SCHEDULE F – AUTHORITY

F(1) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER SERVICE

The transportation of any person or group from anywhere in Nova Scotia to the various Black heritage sites throughout Nova Scotia, including the Halifax Regional Municipality, Preston Township and Birchtown.

SCHEDULE D – RATES

D(1) – RATES

\$100 per adult/\$50 per youth for Halifax Regional Municipality Black heritage site tour

\$150 per adult/\$100 per youth for Preston Township Black heritage site tour

\$200 per adult/\$150 per youth for Birchtown Black heritage site tour

All fees are exclusive of HST.

Youth is defined as 21 and under.

SCHEDULE E – VEHICLES

One 26-passenger wheelchair accessible vehicle

One 12-passenger vehicle

[7] The Notice of Application was advertised in the Royal Gazette on February 7, 2024, as well as posted on the Board's website and forwarded to licensed motor carriers by email, fax, or mail. The following licensed carriers objected to the application:

- Paul MacNeil o/a Halifax Titanic Historical Tours (Titanic);
- Thariq Ali o/a Prestige Limousine (Prestige); and
- John Jeffrey Babineau o/a Anchor Tours.

[8] On March 1, 2024, the Board held a preliminary conference with the parties to discuss the possible narrowing or resolution of issues and to set filing and hearing dates. On March 5, 2024, based on the discussion at the preliminary conference and a process agreed to by the parties, the Board circulated draft charter authorities to the parties for a possible resolution of the matter before proceeding to a formal hearing. The draft authorities were as follows (Appendix A contained a list of 52 historic Black communities across Nova Scotia, as provided by Ayomikun, and is attached to this decision as Schedule A):

SCHEDULE F – AUTHORITIES

F(1) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICES

The transportation of any person or group from any point in Halifax Regional Municipality to various Black heritage sites in Halifax Regional Municipality, including Preston Township and Africville and other communities in Halifax Regional Municipality listed on Appendix A.

F(2) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICES

The transportation of any person or group from any point in Nova Scotia to various Black heritage sites throughout Nova Scotia, provided the charter includes at least one of the following:

- (i) At least three communities listed on Appendix A located outside of Halifax Regional Municipality, OR
- (ii) At least two communities listed on Appendix A located outside Halifax Regional Municipality, if Black heritage sites in Halifax Regional Municipality are included in the charter.

[9] The objectors did not agree to the draft authorities, which were based on the discussion at the preliminary conference. While Ayomikun initially did not agree to the draft authorities, a few days later it confirmed it would have proceeded with the draft authorities. Ayomikun then requested to modify its application to broaden the proposed authority to a general unrestricted charter authority. The Board advised that it would have to re-advertise the application to allow industry to respond. The applicant decided to proceed with the initial application.

[10] In a letter dated March 13, 2024, the Board wrote to the parties setting out a timeline for the filing of evidence and scheduling the hearing on the merits on May 6, 2024. The Board also provided direction on the nature of evidence it expects to receive in such applications from both applicants and objectors:

The Board has recently provided guidance to potential applicants about what type of evidence it expects from applicants for new licenses. For your reference, a copy of the Board's decision is attached in *Sevenseas Property Management Ltd.*, 2023 NSUARB 153 (M11102), see paras. 21-25.

The Board has also commented on the need for any objectors to an application to provide relevant evidence. A copy of the Board's decision is attached in *3259293 Nova Scotia Limited o/a Grape Escape Wine Tours of Nova Scotia*, 2023 NSUARB 160 (M11112), paras. 39-42.

[Board letter, March 13, 2024, pp. 1-2]

[11] Ayomikun filed evidence on February 22, 2024, March 4, 2024, and March 5, 2024. Anchor Tours submitted evidence on April 17, 2024, but the other objectors did not prefile any written evidence. Ayomikun filed rebuttal evidence on April 19, 2024. Further, 11 letters of support were filed in the matter. A public hearing to consider the matter was held on May 6, 2024, at the Board's offices. The hearing was also audiocast on the Board's website.

[12] Ayomikun was represented by its part owners Kevin Brooks, President; and Peter Field, Vice President. Paul MacNeil is the owner/operator of Titanic and John Jeffrey (Jeff) Babineau is the owner/operator of Anchor Tours. Thariq (Tye) Ali is the owner/operator of Prestige, but he did not appear at the hearing. Following the hearing, Titanic withdrew its objection.

3.0 LAW

[13] The state of the motor carrier industry arises in many cases before the Board. The Board has also initiated its own generic proceedings where this issue has been canvassed (see: *Discount Review Decision*, 2015 NSUARB 33 and *Generic Public Hearing Decision*, 2020 NSUARB 69).

[14] The principles and tests the Board applies to this type of application are well known in the provincial motor carrier industry. They have been reiterated on many occasions and are well summarized in *Re Pengbo Fu o/a Pengbo's Shuttle*, 2020 NSUARB 87, affirmed 2020 NSCA 83, at paras. [44] to [47] and [51]:

[44] In Nova Scotia, motor carrier transportation services are regulated under the *Motor Carrier Act (MC Act)*. In general, the *MC Act* regulates motor carrier operators in Nova Scotia to ensure there is a quality, safe, sustainable industry in the Province. To accomplish this, the Board has been given the jurisdiction to regulate virtually all aspects of the industry.

[45] The *MC Act* provides the following guidance to the Board on matters it may consider:

Factors Considered

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess

of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

These apply equally to amendment applications, ss. 12 and 19.

[46] Thus, in assessing an application, the Board considers, among other factors in s. 13, the public interest; the quality and permanence of service to be offered; general effect on other transportation services; and the sustainability of the industry including whether there is need for additional equipment in the area. In addressing whether there would be an excess of equipment under s. 13(a) above, the Board must consider whether there are vehicles currently licensed which could provide the services applied for. In other words, is there a need for the services and/or equipment sought by the Applicant?

[47] The *MC Act* requires the Board to balance, in each case, the various relevant issues and interests which may overlap and, at times, conflict. In the *Trius Inc.* Decision, dated September 22, 1993, the Board described the s. 13 considerations as follows:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

...

[51] In each case, the applicant must prove to the Board that, after taking all factors into consideration, the Board should grant the application, *Molega Tours Limited*, 2013 NSUARB 243, para. 23.

[15] As noted earlier in this decision, the Board has provided guidance about the type of evidence it generally expects applicants and objectors to provide in a contested matter. In *Re 3259293 Nova Scotia Limited o/a Grape Escape Wine Tours of Nova Scotia*, 2023 NSUARB 160, the Board made the following comments:

Quality of Evidence

[35] There is an obligation on the part of an applicant to provide cogent and tangible evidence supporting the need for the requested license. While it is up to an applicant to decide how the application is presented to the Board, it is reasonable to expect that an applicant would provide evidence about how it intends to operate and the potential clientele. Preferably, this should be a written business plan, but at a minimum at least some documentation is required to support the application. This might include:

- financial projections of forecasted revenues and expenses, including operating expenses such as salaries, fuel, insurance, repairs and maintenance, as well as expenses to purchase, lease, or finance the motor coach, bus, minibus, van or limousine to be used in the business;
- any financial analysis undertaken including projected ridership and breakeven points based on a few assumptions;
- the qualifications, training and experience of the applicant and key employees to manage and operate a safe and sustainable motor carrier business; and
- a marketing or sales plan about the target market, how the applicant intends to attract its clients, and more importantly, to demonstrate to the Board that this clientele is not already being served by the existing motor carrier industry. This type of evidence would generally include:
 1. letters and emails from potential clients who tried to hire existing carriers but were refused because the carriers were not available,
 2. letters or emails of support from potential clients that show there is a "niche" market that is not adequately served by existing carriers, and
 3. survey or market research that demonstrates the size of the market and demand for any increased service.

[36] The documentation should be filed in advance of the hearing. Depending on the sophistication of the business, the documentation should normally include a *pro forma* income statement supported by estimates or quotes from potential suppliers; diplomas, training certificates and résumés of the owner/operator and key employees; and letters of support and testimonials from potential clients, groups and associations describing why the new service is needed and cannot be served by existing motor carriers. Where the application is opposed, those who wrote letters of support may be required to appear at the hearing if required by the objectors and the Board.

[37] In this application, as discussed, Ms. Downey Lim presented some of this evidence including contracts that showed increased ridership, emails of support, and evidence that the niche is not already being served by the existing motor carrier industry.

[38] The Board recently expressed concern about the quality of the evidence presented by applicants and objectors in motor carrier matters. In *Re McNeil, operating as Halifax Titanic Historical Tours*, 2023 NSUARB 138, the Board made the following comments:

Except for the general proposition that it is desirable that customers have options in transportation, which the Board fully accepts, Mr. McNeil has provided no verifiable evidence about the current need for the general charter services he proposes. The Board finds the evidence supporting this application is lacking. While the quality of the evidence advanced by the objectors might be similarly criticized and may not have withstood a more cogent presentation of evidence supporting the application, they do not bear the ultimate burden in this proceeding.

[39] In this case, Grape Escape provided cogent documentary evidence in support of its application. Where an applicant has provided substantial evidence to establish, on the balance of probabilities, if accepted, that an application should be granted, the Board expects an objector would provide evidence of sufficient quality to support the proposition that it should not.

[40] This is not shifting the burden of proof but recognizing that where an application cannot clearly be rejected because of a lack of verifiable evidence presented by the applicant, there is some evidentiary burden to establish the opposite proposition advanced by an objector. While an objector can attempt to succeed by merely challenging the applicant's evidence or positions, there is a real risk of falling short as occurred in this proceeding.

[41] While it is up to objectors to determine how they present their case, having some verifiable evidence would be helpful in the Board's deliberations. While not necessarily applicable to every case, this could include:

- Utilization data about the vehicles authorized under an objector's license and whether in fact there was availability at a reasonably comparable price to address the applicant's lack of ability to meet demands with its existing fleet.
- Financial statements showing the profit or loss trends of an objector's motor carrier business.
- Documentation showing whether in fact the objector's business is in competition with the applicants. This could include promotional materials and the point of origin of the objector's tours.
- Survey, market research, or other verifiable evidence that demonstrates the market has reached a saturation point.

[42] The Board recognizes some of this information could potentially be commercially sensitive. The economic regulation of a competitive industry is not without challenges in these circumstances. However, s. 12 of the Board Regulatory Rules allows the Board to protect confidential information, including potentially sensitive commercial information, in the appropriate circumstances.

4.0 EVIDENCE

[16] As is often the case where lay litigants appear before the Board, the distinction between submissions and evidence is not fully appreciated. The Board has considerable experience in assessing the weight to be placed on these types of presentations. Also, s. 19 of the *Utility and Review Board Act*, S.N.S. 1992, c. 11, provides that the Board is not bound by the strict rules of evidence. All the participants were affirmed at the start of the hearing. Statements made by the participants were considered

as evidence, subject to considerations related to weight, no matter at what stage in the proceeding these were made.

[17] Ayomikun called five witnesses at the hearing, including its three co-owners: Mr. Brooks, Mr. Field and Dalton Cain. Dolly Williams and Juanita Peters were also called to testify. The applicant's three co-owners described their business-related experience. They all expressed a passion for business, and for this proposed business specifically.

[18] Mr. Brooks has owned three successful businesses in the past and has managerial experience from other occupations. He was also a bus driver for Ambassatours from 2014 to 2020, driving a Hop On/Hop Off bus which primarily served cruise ship passengers in Halifax. Mr. Cain has taken entrepreneurial and tourism training at the Nova Scotia Community College and is currently an ambassador for its international program. Mr. Field has a business degree. They plan on creating a website and partnering with Black cultural sites.

[19] Mr. Brooks stated that he and Mr. Cain will drive the vehicles. Indeed, all three co-owners have the required drivers' class license. Mr. Brooks indicated that they are currently making arrangements for a mechanic to service the vehicles. The 26-passenger vehicle will be used for tours to the Preston Township and the Black Cultural Centre. It will be wheelchair accessible. Mr. Brooks said some cruise ship passengers require accessible vehicles. The 12-passenger vehicle will principally serve tours of Africville. They said they will assess which vehicle to use for charters across the province.

[20] The three co-owners were passionate about their new business venture and serving their Black and African Nova Scotian community. They highlighted their deep connection to, and knowledge of, the community. Mr. Brooks is a 7th generation member

of the community dating back to 1814. They testified that there is a significant demand for Black cultural tours of their communities in HRM, as well as Black history and culture across the province. They all asserted that this market is underserved and they need the motor carrier license to connect this cultural tourism demand with the Black cultural sites and events in HRM and across the province. Mr. Cain said there is also a demand from international students to immerse themselves in Black cultural experiences in Nova Scotia.

[21] Mr. Brooks said his experience working for Ambassatours showed him that there are no charter or tour services for this market. He said that when cruise ship passengers learned that there are important Black cultural sites and vibrant communities in HRM, the visitors wanted to see them but had no means of transportation to those locations. For example, for those expressing an interest to visit Africville, he had to drop them off in the Hydrostone district and they would need a taxi there and back to the Hop On/Hop Off bus.

[22] In response to questions from the Board, Mr. Field said that Ayomikun has received confirmation of funding from the Business Development Bank and the Black Business Initiative (BBI). The latter confirmed a six-figure financial commitment. He said the Business Development Bank discussions were supportive, but specific details were still being canvassed. When asked about this on cross-examination, he indicated that Ayomikun had not filed the financial information with the Board due to confidentiality concerns. When assured by the Board during the hearing that commercially sensitive information is treated confidentially by the Board, the applicant filed the business plan it provided to the lending institutions, as well as the confirmation of financing from BBI. The

business plan was treated confidential in its entirety. The amount of financing from the BBI was redacted, but the financing letter was filed as an exhibit.

[23] Ms. Williams spoke in her capacity as a member of various community and provincial associations, including as Co-Chair of the Road to Economic Prosperity; Vice President of the Nova Scotia Federation of Seniors and President of the East Preston Senior Citizens Club. She echoed the applicant's view that members of the Black community want to share their rich history and culture, but they are underserved by the existing motor carrier industry. She expressed frustration about the inability to secure charter services for groups she was involved with. She said that some planned summer trips had to be delayed until after the cruise ship season because local carriers said they were busy with that clientele. She said that at those peak times, they had to call New Brunswick or Prince Edward Island to find a bus.

[24] On questioning by Mr. Babineau about whether it was realistic for her to expect that buses should be available at any time in the peak tourism season, when even he as an operator could not find an available bus, she replied:

... As seniors groups and members of the seniors, that's not my problem...it's your issue of not getting a bus. ... You're the bus owner, you're the bus company, you guys deal with that issue, not me, that's not my concern.

...

It's your issue, not mine. My issue is we need a bus. It's your concern. ... That's why we need a bus other than you guys sitting there, sitting in Halifax controlling everything...

[Soundfile, Track 1, May 6, 2024, 2:41:01-2:41:40]

[25] Juanita Peters is the Executive Director of the Africville Museum, which she described as an "incredible Nova Scotian asset." She also filed a letter supporting the application. She indicated that the museum has many visitors but that there is no

transportation to the site for cruise ships tourists, although she is aware there is interest in the venue from her discussions with others at the Port of Halifax.

[26] In an effort to familiarize the local industry with the museum, she invited staff from Ambassatours to the site. In her view, local tour guides have not been telling the history of the region's Black community.

[27] Ms. Peters said that she is working with others to develop an African Nova Scotian Tourism Strategy. Besides their important cultural component, the museum and other Black communities in Nova Scotia also provide an important economic development opportunity, including launching businesses like Ayomikun. She said that other tour agencies are not doing the work of promoting Black cultural tours in Nova Scotia, so it is incumbent on members of her community to do so.

[28] She added that some in her community are starting to promote Nova Scotia's Black culture and history to potential visitors outside the region, noting Elevate Black Nova Scotia, also mentioned by Mr. Field. She also testified that the Africville Museum has developed a partnership network across North America with 25 partner organizations in Canada and eight in the United States. However, she said to fully develop the potential of this partnership network for the museum, businesses like Ayomikun are required to serve those visiting the area.

[29] Mr. Babineau of Anchor Tours is opposed to the application. He said he is not opposed to Black cultural tours, but he questioned whether there is enough demand to support a new motor carrier license. He stated that an applicant should show that there is enough demand to sustain the proposed license. Mr. Babineau testified that Ayomikun did not file evidence showing it tried to hire other carriers to provide vehicles and they

were unable to provide any. He added that the applicant did not file itemized itineraries for the tours they proposed to offer.

[30] Mr. Babineau said his objection was based on the fact that Ayomikun is a brand-new company that is unproven. He said the applicant would not yet have an established clientele and that this could lead to a “long slow burn” of capital while it built up its business. He highlighted that the motor carrier industry is subject to economic regulation and the risk is that a new business will not be sustainable and will need to re-apply to the Board in the future for new broader charter authorities to help make it sustainable. He added that the request for 12 and 26 passenger vehicles was a “big ask” for a new business.

[31] He suggested that Ayomikun had other options as it started its new business. Mr. Babineau recommended that they “start small” like he and other operators in the industry. He said that the applicant could book tours for their clients with existing carriers while they were building up their business. He said that while he currently has three 14-passenger vehicles, he still hires other carriers to serve some of his business.

[32] Finally, Mr. Babineau said that Aberdeen Tours, operated by Jonathan Duru, was already providing Black heritage and cultural tours and he questioned whether that part of Mr. Duru’s business was successful. Mr. Babineau said that the last customer review for Aberdeen Tours on Viator (a tour booking website operated by Tripadvisor) was in March 2020. Mr. Babineau also uses Viator and said that he would have expected many more customer reviews on the website if Aberdeen’s tour offering was busy. He suggested that the Black cultural tour business had not worked out for Mr. Duru because the marketplace had not recognized this cultural product.

[33] In rebuttal to Mr. Babineau's concern about Mr. Duru's inability to develop the Black cultural market, Ayomikun's witnesses responded that while Mr. Duru had good intentions, he had immigrated to Canada and, while he was African Nova Scotian, he had no knowledge of local Black history and culture.

[34] Ms. Peters also addressed Mr. Babineau's statement that Aberdeen Tours was already serving this market. She mentioned that she tried to hire Aberdeen Tours twice in the past and both attempts proved to be unsatisfactory. One of these occasions involved an important cultural gathering at the Africville Museum. She said that Mr. Duru tried to cancel his services as the event was happening at the museum because he had been hired for other work. She insisted that he satisfy his commitment to her attendees. On another occasion, Mr. Duru cancelled his services for a Christmas engagement she had arranged with Aberdeen Tours for a large group of her family and friends.

5.0 ANALYSIS AND FINDINGS

5.1 Fitness and ability to provide safe and reliable service

[35] Section 13(c) of the *MCA* provides that the Board consider the "quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service."

[36] All three co-owners of Ayomikun have business or entrepreneurial training and experience. They all have the requisite drivers' class licenses, with Mr. Brooks and Mr. Cain starting as the drivers of the two vehicles. Mr. Brooks was previously employed as a driver for Ambassatours for five years, serving the cruise ship passengers in Halifax.

[37] Further, the three co-owners are focused on providing a quality service to their clientele. As members of the Black community, they are well versed in the history and culture of their community and are passionate about sharing that cultural product with their market.

[38] The Board is satisfied that the applicant has the “fitness, willingness and ability” to provide proper service, as required under s. 13(c) of the *MCA*.

5.2 Proposed authority – Black Heritage sites across Nova Scotia

[39] The applicant submits that the proposed license is required to serve the niche Black cultural market in Nova Scotia. The co-owners assert that this niche market is not currently being served by the existing motor carrier industry.

[40] I accept the evidence of Ayomikun’s witnesses that this niche Black cultural market is based on the rich history of the Black community in Nova Scotia. Their testimony, and the comments contained in the filed letters of comment, outlined this history and the cultural experiences that are available in many Black communities, not only in HRM, but across the province. Nova Scotia was invariably described as the birthplace of Black culture and heritage in Canada, dating back to the early 1600s. There are 52 historic Black communities in the province that pre-date Confederation, as listed in Schedule A to this decision. The evidence suggests that most, if not all, of these communities remain vibrant and contribute to the rich culture of the Black community in this province.

[41] Based on the evidence presented in this matter, I am satisfied that there is a demand for this niche Black cultural market in this province. The Board also finds that this niche Black cultural market is not being fully served by the existing carriers.

[42] The letters of support confirmed that this niche Black cultural market exists and that there is a need for a new motor carrier license to serve this market. In letters dated February 20 and 22, 2024, respectively, HRM Councillors David Hendsbee (District 2 Preston-Chezzetcook-Eastern Shore) and Trish Purdy (District 4 Cole Harbour-Westphal-Lake Loon-Cherrybrook) stated:

Nova Scotia's Black history is rich and diverse, spanning centuries of resilience, struggle, and triumph. From the early settlements of African Nova Scotians to their enduring contributions in various fields such as politics, arts, and culture, their stories are integral to the fabric of the province's identity.

Ayomikun, meaning "My joy overflows," seeks to serve as a conduit for connecting these historic African Nova Scotian communities. By granting them this license, they can develop their niche market and forge connections between communities such as Preston Township, Birchtown, Africville, Lucasville, Upper Hammond Plains, Tracadie, Whitney Pier, and many others, each with significant stories to share.

Through guided tours and educational programs, visitors can gain a deeper understanding of the Black experience in Nova Scotia, fostering empathy, appreciation, and inclusivity.

Through guided tours and educational programs, visitors can gain a deeper understanding of the Black experience in Nova Scotia, fostering empathy, appreciation, and inclusivity.

[Exhibit A-16, p. 2 and p. 3]

[43] The Honourable Twila Grosse, Minister of African Nova Scotian Affairs, offered similar comments:

The importance of sharing, preserving, and celebrating Black/African Nova Scotian history cannot be overstated. Nova Scotia is known as the birthplace of Canada's Black/African Nova Scotian community, with our presence in the province dating back to the 1600's. It is a long, rich and deep history built with resilience, creativity and triumph over adversity, representing an integral part of our collective history. However, despite its significance this aspect of our culture landscape often remains underrepresented in mainstream tourism offerings.

I'm glad to see Ayomikun Bus Charters LTD. stepping up to address this gap by providing educational tours that showcase the Black/African Nova Scotian communities. By offering visitors the opportunity to explore historical communities and interact with knowledgeable guides, they not only enrich the tourism industry in Nova Scotia, but also contribute to economic development and empowerment within underrepresented communities.

[Exhibit A-16, p. 9]

[44] Further, in a letter dated March 28, 2024, Russell Grosse, Executive Director of the Black Cultural Centre for Nova Scotia, in Cherry Brook, stated this was an “underserved market”:

A Bus Charter service with a mandate to serve the niche market of the African Nova Scotian / Black Canadian Community would not only be a sustainable business model for Ayomikun Bus Charters LTD, but it would also grow an underserved market and support major cultural organizations, such as the Black Cultural Centre, Africville Museum, Black Loyalist Heritage Society and the UNIA Museum as well as a unique service to the long standing historical Black communities across Nova Scotia.

[Exhibit A-16, p. 12]

[45] Rev. Dr. Lennett J. Anderson, CD, of the Emmanuel Baptist Church in Upper Hammonds Plains also noted the need for this service:

This groundbreaking initiative aims to showcase the invaluable generational contributions of the 52 historic African Nova Scotian communities. It represents a crucial step towards acknowledging and honoring the rich heritage of African Nova Scotians, that is intricately woven into the fabric of our province's history.

It is essential to note that currently, no other service in our province offers tours specifically dedicated to showcasing the vibrant history and culture of African Nova Scotian communities. The establishment of this tour bus company fills a significant gap in our tourism landscape, promising a unique and enriching experience for residents and visitors alike.

Ayomikun Bus Charters Ltd. is not meant to compete with existing tour services, but serves as a complementary offering, focusing on highlighting the often-overlooked contributions of African Nova Scotian communities. This amplifies voices historically marginalized and ensures their stories are rightfully brought to the forefront.

[Exhibit A-16, p. 8]

[46] Letters of support were also filed by other groups and organizations from the Black community, including community groups, historical groups and economic development or tourism organizations, including: the Preston Township Society; Elevate & Explore Black Nova Scotia; the Founders of the Booker School in Port Williams, Nova Scotia; East Preston Seniors; and the Africville Heritage Trust.

[47] In prior decisions, the Board has granted applications for new motor carrier licenses or approved extended charter authorities for services related to niche cultural

experiences that were not being served by the existing motor carrier industry. Ironically, one such approval was granted to Mr. Duru of Aberdeen Tours: see *Jonathan Duru, operating as Aberdeen Charters, Tours, Taxi & Limo*, 2013 NSUARB 79. He applied to add one 21-24 passenger mini-bus because his 14-passenger van could not accommodate larger groups. Mr. Duru was the only African Nova Scotian tour company operating Black heritage and/or cultural tours in the province. Sixty percent (60%) of Aberdeen's business was in this cultural market, specifically trips to the Black Cultural Centre in Cherry Brook, Nova Scotia. In its decision, the Board concluded:

V. FINDINGS

[51] The Board finds that Mr. Duru has serviced a niche market in Nova Scotia. He is the only African Nova Scotian motor carrier providing Black Heritage and/or Cultural Tours in Nova Scotia. He has done this work for seven years. He has worked with the Black Cultural Centre to promote and develop tours. This is his market and one that has been basically ignored by other motor carriers, as well as was alleged, by Tourism and the Nova Scotia Museum Association.

[52] This is not a market that [the objecting carrier] has ever had. This will not take business away from [the objecting carrier]. When [the objecting carrier] states her opposition is because [the objecting carrier] wants to maintain its market during this downward trend, this part of Mr. Duru's business is not [the objecting carrier's] market to maintain.

[53] As the Board has noted in a number of previous decisions including *George Wilbert Johnson*, 1986 F-283 and *Jamar Transport Ltd.*, 2008 NSUARB 98, p. 17 footnote 1, the service a carrier provides in some instances is not just the physical bus. Rather, it is also the culture provided by those who operate the service, such as with Mr. Johnson's Mi'kmaq culture and language and with Mr. Duru's African culture and descent. [Emphasis added in original]

[*Aberdeen* Decision, paras. 51-53]

[48] Similarly, the Board has approved other applications to serve niche cultural markets, including *Sunshine Atlantic Holdings Ltd.* and *Pi Yao International Travel Inc.*, 2014 NSUARB 179 (Asian market); *A Day by the Sea Tour Limited*, 2014 NSUARB 68 (bilingual tours in the Acadian regions of southwestern Nova Scotia); *Membertou Reserve*

Band Council, 2018 NSUARB 119 and 2019 NSUARB 147 (Mi'kmaq cultural tours); and *Eskasoni Transportation Limited*, 2024 NSUARB 63 (Mi'kmaq cultural tours).

[49] The objectors questioned whether there is sufficient demand for Black cultural tours or charters and, if so, if that market is already served by Mr. Duru of Aberdeen Tours.

[50] I accept the evidence of Ayomikun's witnesses that Mr. Duru's unsuccessful experience serving the Black cultural market should not be reflective of the lack of demand in that market or that it is already being served. First, I find that Mr. Duru was unable to meet the demand for service by the Black cultural market. The examples provided by Ms. Peters are illustrative. Mr. Duru prioritized cruise ship business rather than a previously booked engagement to transport a group attending an important function at Africville. Second, while I do not question Mr. Duru's good intentions, I find that Ayomikun's co-owners are more familiar with local Black history and culture, being members of that community. Third, as it relates to whether there is sufficient demand, I find that Ayomikun's co-owners have demonstrated they have access to a broad network of contacts and partners in the community to develop enough demand from this niche Black cultural market to sustain their business.

[51] Based on the evidence, I am satisfied that the applicant has shown there is a niche Black cultural market, that there is a sufficient demand for these services, and that it is currently underserved. I also find that Ayomikun's tours and charters will not negatively impact other carriers' existing business. Therefore, I am prepared to approve the proposed license authority.

[52] However, I wish to address a few issues that arose at the hearing about the scope of the license authority under the license. The requested license authority was for the transportation of any person or group to various Black heritage sites throughout Nova Scotia. The phrases “cultural tours” and “heritage sites” were used interchangeably during the hearing. Reference was often made to the list of 52 historic Black communities listed in Schedule A to this decision. I see no effective difference between the reference to heritage sites and cultural tours. Further, I consider that Black cultural events are a logical extension of Black culture or heritage. As a result, I consider that charters to Black sporting events or Black gatherings or festivals also fall within the scope of the authority discussed at length in this proceeding. To provide more clarity and certainty over the scope of the license authority being approved herein, the approved authority is amended to read as follows:

SCHEDULE F – AUTHORITY

F(1) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER SERVICE

The transportation of any person or group from anywhere in Nova Scotia for Black cultural tours or charters, events or heritage sites throughout Nova Scotia, including the Halifax Regional Municipality, Africville, Preston Township, Birchtown, Shelburne County, and the Black communities listed in Schedule A attached (and return).

[53] Notwithstanding the above, the charter authority approved in this decision does not extend to general charter service, even if all passengers being transported originate from the Black community. Accordingly, group charters to a provincial sporting event or tournament, or to events or locations like shows, concerts, shopping destinations, casinos or like experiences fall outside the scope of Ayomikun’s license authority. These general activities are presently served by the existing motor carrier

industry and fall outside of what was requested by Ayomikun. So, for example, the transportation of a basketball team to a "peace cultural tournament" within the Black community, as was described in the hearing, falls within the intended scope of the approved authority, but not the transportation of the same team to a provincial or regional basketball tournament. Likewise, given that the charter authority is province-wide, there may be occasion to travel long distances from HRM to Black communities in other parts of the province. In such circumstances, there may be a need to stop in other communities for rest or food. As long as those other stops are incidental only to the main purpose of the license, that would substantively comply with the license, provided the main purpose of the charter is related to their restricted license authority.

5.3 Proposed vehicles

[54] Ayomikun has applied to operate one 12-passenger vehicle and one 26-passenger wheelchair accessible vehicle. The applicant stated the 12-passenger vehicle is generally for trips to Africville, while the larger 26-passenger vehicle is for trips to Preston Township and the Black Cultural Centre. I am satisfied the vehicles are reasonably required to meet the anticipated demand. The proposed vehicles are approved.

5.4 Proposed rates

[55] Ayomikun has applied for "per person" rates for three specified tours: i.e., HRM, Preston Township and Birchtown, Shelburne County. Mr. Brooks acknowledged at the hearing that these proposed rates omitted other services being proposed, including rates for groups, rates for trips to other parts of the province, and deadhead rates (i.e., a

per km charge to transport an empty vehicle to the originating point of a tour or charter and return to the carrier's place of business).

[56] There was no objection to the proposed rates. The Board directs Ayomikun to submit a revised schedule of rates which includes rates that were inadvertently omitted in the application. Unless an issue arises needing further review, the Board is prepared to approve the rates.

6.0 CONCLUSION

[57] Ayomikun applied to the Board for a motor carrier license to operate one 12-passenger vehicle and one 26-passenger wheelchair accessible vehicle to transport passengers from "anywhere in Nova Scotia to various Black heritage sites throughout Nova Scotia, including the Halifax Regional Municipality, Preston Township and Birchtown", Shelburne County, Nova Scotia. In deciding whether Ayomikun should be granted a motor carrier license, the Board considered that the applicant has established a need for the proposed service and that it can provide a quality service in a safe, reliable, and sustainable manner. The public passenger charter industry in Nova Scotia is economically regulated under the *Motor Carrier Act*. This is to ensure the economic sustainability of carriers in the industry, given the significant operating expenses and the high capital investment needed for equipment.

[58] Based on the evidence presented in this matter, the Board finds that there is a niche Black cultural market in this province and that this market is not being fully served by the existing carriers. In the context of the test it applies to applications for a new license and charter authority under the *Motor Carrier Act*, the Board approves the

application for the requested license authority and proposed vehicles. The Board directs Ayomikun to file a complete schedule of rates to address rates for services that were omitted from the initial rate schedule.

[59] An Order will issue after the revised rate schedule is filed.

DATED at Halifax, Nova Scotia, this 20th day of June, 2024.



Roland A. Deveau

Schedule A

Historical Black Communities In Nova Scotia c. 1749



1. Shelburne
2. Birchtown
3. Yarmouth
4. Greenville
5. Hassett
6. Southville
7. Danvers
8. Weymouth Falls
9. Acadiaville
10. Jordantown
11. Digby
12. LeQuille
13. Granville Ferry
14. Inglewood (Bridetown)
15. Cambridge
16. Middleton
17. Gibson Woods
18. Aldorshot
19. Kentville
20. Three Miles Plains
21. Truro
22. Springhill
23. Amherst
24. Trenton
25. New Glasgow
26. Antigonish
27. Linconville
28. Sunnyville
29. Upper Big Tracadie
30. Mulgrave
31. Monastery
32. New Waterford
33. North Sydney
34. Sydney
35. Glace Bay
36. Sydney Mines
37. Halifax
38. Cobequid Road
39. Lucasville
40. Hammonds Plains
41. Africville
42. Beechville
43. Dartmouth
44. East Preston
45. North Preston
46. Cherry Brook
47. Lake Loon
48. Liverpool
49. Conway
50. Delaps Cove
51. Guysborough Rd.
52. Maroon Hill